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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,716	03/28/2006	Bernhard Lichtberger	LICHTBERGER ET AL -1PCT	4991
25889	7590	11/12/2009	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			MAYE, AYUB A	
			ART UNIT	PAPER NUMBER
			3742	
			MAIL DATE	DELIVERY MODE
			11/12/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,716	<b>Applicant(s)</b> LICHTBERGER ET AL.	
	<b>Examiner</b> AYUB MAYE	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed 07/27/09 have been fully considered but they are not persuasive.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theurer (5099097) in view of Theurer (5694856).

Theurer (5099097) teaches that a method for welding two rails (7 as shown in fig.1) of a track using a welding unit (1 as shown in fig.1) of a welding machine comprising the steps of: actuating compression cylinders of the welding unit (1 as shown in fig.1) to move first and second rails (7 as shown in fig.1) with respect to a working direction of the welding machine in a longitudinal direction of the rails (7 as

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shown in fig.1), each of the first and second rails (7 as shown in fig.1) being gripped by a pair of clamping jaws of the welding unit (col.5, lines 25-35); and conducting a welding process to weld the first and second rails to one another (col.5, lines 48-55); wherein parallel to the welding of the first rail to the second rail, a compressive force for producing a compressive stress is passed into a front rail end of the second rail via a rail-pushing device in a direction towards the first rail (col.5, lines 50-67, col.6, lines 1-40); and wherein after termination of the welding process (col.6, lines 25-55). Theurer (5099097) wherein, in a first phase of the welding process, the pairs of clamping jaws pressed onto the first and second rails are distanced from one another until adjacent surfaces of the first and second rails are spaced from one another to form a welding gap  $W_s$ , and, in a second phase, the pairs of clamping jaws are moved towards one another while current is supplied and, parallel thereto, the compressive force is passed into the second rail by the rail-pushing device (col.5, lines 25-67, col.6, lines 1-40). furthermore, Theurer (5099097) wherein the compressive stress produced by the compressive force of the rail-pushing device conforms to at least an ideal compressive stress correlating to actual rail temperature (col.6, lines 1-35) and wherein the welding unit and the rail pushing device are controlled synchronously (col.2, lines 35-50). however, Theurer (5099097) fails to teach of providing a rail anchor in front of the welding machine in the working direction via a force-locking connection of a section of rail to ties.

Theurer (5694856) does teach providing a rail anchor in front of the welding machine in the working direction via a force-locking connection of a section of rail to ties and the first rail is braced with ties (col.3, lines 40-67). It would have been obvious to

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one ordinary skill in the art to modify Theurer (5099097) with rail anchor with ties as taught by Theurer (5694856) in order to prevent or resist longitudinal rail movement (Theurer (5694856), col.1, lines 8-9).

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theurer (5099097) in view of Theurer (5694856) and further in view of Carstensen et al (4800817).

Theurer (5099097), as been modified by Theurer (5694856), teaches all the limitation as previously set forth, except for producing third rail adjoining the second rail.

However, Carstensen teaches that producing third rail adjoining the second rail (col.2, lines 40-48). It would have been obvious to one ordinary skill in the art to modify Theurer (5099097), as been modified by Theurer (5694856), with third rail as taught by Carstensen in order to form a unitary track section many times longer than the length of individual rail segments (Carstensen, col.1, lines 20-22).

### Remarks

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Furthermore, applicant argues that the reference Theurer 097 does not teach rail pushin device that is supported on the rail anchor of a third and is force lockingly brought into contact with adjoining rail ends of the second and third rails. However, examiner respectfully disagrees with applicant because the reference Theurer 097 does teach of providing a device that creates compression forces to adjoin the welding units sections end and provide permanent weld as Theurer discussed in col.6, lines 10-35 and Theurer 856 teaches of providing a rail anchor as Theurer discussed in col.3, lines 40-50.

Additionally, the combination of references Theurer (5099097) in view of Theurer (5694856) and also in view of Carstensen et al (4800817) as discussed above fully meets all the claimed limitations. Theurer (5099097) teaches of welding unites of welding together adjacent ends of track rail sections, Theurer (5694856) teaches of providing rail anchor and Carstensen teaches of producing third rail adjoining the second rail and combining prior art elements according to known method to yield predictable results.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AYUB MAYE whose telephone number is (571)270-5037. The examiner can normally be reached on 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Ba Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.M.

/Ayub Maye/

11/05/09

Examiner, Art Unit 3742

/TU B HOANG/

Supervisory Patent Examiner, Art Unit 3742